1-24-2017

State v. Stewart Appellant's Brief Dckt. 44338

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent v. DAVID LYNN STEWART, Defendant-Appellant	Supreme Court Docket No. 44338-2016 Canyon CountyCase No. CR2014-27456-N

APPELLANT'S OPENING BRIEF

APPEAL FROM THE DISTRICT COURT OF THE
THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF CANYON

HONORABLE D. DUFF MCKEE, District Judge
HONORABLE JOHN MEIENHOFER, Magistrate

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A. Nature of the Case

This is an appeal from the district court's order on intermediate appeal, which affirmed the judgment and order of probation issued following Mr. David Stewart's conditional guilty plea to driving under the influence by which he preserved his right to appeal the magistrate's order denying his motion to suppress.

B. General Course of Proceedings

One evening in December 2014, a police officer with Nampa City followed a vehicle driven by Mr. Stewart as it traveled at 26 miles per hour on 10th Avenue South. Transcript of Motion to Suppress Hearing[1] ("MTS Tr.") p. 7, ln. 20-25; p. 10, ln. 19 – p. 12, ln. 8. The section of 10th Avenue had no posted speed limit signs. *Id.* at p. 12, ln. 9-25. The officer had been trained to believe that Nampa City Ordinance Number 1057, which was enacted in 1966, established a default speed limit of 20 mph in areas without posted speed limits. *Id.* at p. 13, ln. 1-4, p. 14, ln. 19-31; p 15, ln. 14-23; p. 25, ln. 7-17. The officer stopped Mr. Stewart's vehicle for speeding and thereafter arrested Mr. Stewart for driving under the influence, a second offense. CR 9-11.

Mr. Stewart moved to suppress, arguing that the speed limit along 10th Avenue was not 20 mph and the officer therefore unlawfully initiated a traffic stop.

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[1] The transcript prepared of the hearing on Mr. Stewart's motion to suppress, which was held on June 12, 2015, in an exhibit in this appeal.

CR 19-21. The state filed a written objection, arguing that Ordinance 1057 establishes a default speed limit of 20 mph and provides for signs at "every major entrance to the city of Nampa" notifying travelers that the speed limit is 20 mph unless otherwise posted. CR 29-30, 36-37; *see also* Exhibit B (copy of Ordinance 1057).

The state conceded that these signs "may be, at present, defective" because they did not comply with the Idaho Code provisions that local governments must follow to change the speed limit in their jurisdictions. CR 31. Citing to *Heien v. North Carolina*, 135 S.Ct. 530 (2014), the state contended the signs' legality was ambiguous — and the officer's conduct thus reasonable — because the signs complied with Ordinance 1057 but not the Idaho Code. CR 31-33.

Mr. Stewart responded that Ordinance 1057 was patently outdated. CR 40-43. The day prior to the suppression hearing, the state conceded Ordinance 1057 had been repealed and instead argued that a subsequent 1988 ordinance, Ordinance 2129, established the default speed limit of 20 mph. CR 54-71.

At the hearing on Mr. Stewart's motion, the officer testified that there are no speed limit signs on 10th Avenue South and described the area where he stopped Mr. Stewart as an unmarked speed zone. MTS Tr p. 12, ln. 9-25. The officer testified that at the time of the traffic stop, he determined the applicable speed limit by relying on Ordinance 1057 and various signs erected on major roads entering city

limits that welcome travelers to Nampa and indicating that the speed limit is "20 mph unless otherwise posted" ("welcome signs"). *Id.* at 14, ln. 21-24; p. 15, ln. 13 - p. 16, ln. 7; p. 17, ln. 13-25; Exhibit A.

The officer acknowledged the welcome signs do not meet the statutory requirements for speed limit signs, such as being a certain size, rectangular, white, having black lettering and listing the ordinance number. MTS Tr. p. 18, ln. 21 - 21, ln. 6. The officer also acknowledged that Ordinance 1057 provides for speed limits on specific roads different than the speed limits currently posted on those roads. *Id.* at p. 23, ln. 14 - p. 25, ln. 6.

The officer explained "the big thing that I enforce is the 20 miles an hour unless otherwise posted" *Id.* at p. 22, ln. 2-5. The officer testified that when he was trained, the department "gave us like a book, kind of a thick cutout smaller one that we can keep in our ticket book that showed all the ordinances and city codes and everything like that that we could study from and enforce and refresh just like a state code book." *Id.* at p. 29, 8-16. The officer testified that when he was trained, his Field Training Officer showed him the outskirts of the city and the speed limit signs and taught him to rely on the ordinance to enforce the non-posted areas. *Id.* at p. 29, ln. 17-25.

The magistrate inquired as to the speed limit on 10th Avenue South "as we sit here now" to which the officer responded: "There are proper signage in Nampa

right now, yes. They are putting up further signs now." *Id.* at 14, ln. 1-6. The officer explained that the speed limit on on 10th Avenue South is "now 20 because we've got proper signage." *Id.* at 14, ln. 8-10. When asked if he currently could enforce the default speed limit, the officer responded: "The codes have been [added to the signs] and they've got the signs — they haven't got every single sign in place at the time, but it's getting posted. So at this point, yes, we have proper signage . . . they're going to be replaced one by one, but we're still more heavily signed than any city." *Id.* at p. 21, ln. 12-16.

As the state prepared to call the city engineer to testify concerning speed limits in Nampa, the magistrate interjected and indicated that since the officer erred in good faith regarding the applicable speed limit, there was no police misconduct to deter by suppressing the evidence. *Id.* at p. 31, ln. 11-17. The magistrate found: "Officer Poore was patrolling. He thought the speed limit was 20. Now that the signs are properly on there it is 20. So he did everything he was supposed to do." *Id.* at 31, 14-17.

Mr. Stewart argued that the officer's mistake of law was unreasonable because the Idaho Code unambiguously outlines the steps for a city to take in order to lower the speed limit in its jurisdiction. *Id.* at p. 34, ln. 2 - p. 35, ln. 9. The magistrate found the officer made a "mistake of law" but it relied on *Heien*'s

indication "that mistakes of law can in circumstances be used to justify an investigatory stop." *Id.* at p. 35 ln. 25 - p. 36, ln. 11.

Mr. Stewart noted that Idaho had previously declined to adopt the United State's Supreme Court's creation of a good faith exception in *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992) and argued that the detention violated Article 1, Section 17 of the Idaho Constitution. MTS Tr. p. 36, ln. 12 p. 38 ln. 7. The magistrate declined to extend greater protection under our state constitution. *Id.* at p. 38, ln. 10-11; p. 39, ln. 4 – p. 40, ln. 2.

Mr. Stewart then asked to call the city engineer as a witness to establish that Ordinance 1057, which the officer relied on, had been repealed. *Id.* at p. 40, ln. 5-11 The state conceded that "Ordinance 1057 has been repealed" and the state's "position was that a different ordinance, Ordinance 2129 enacted in 1988 and that presently established the 20-mile-an-hour zone." *Id.* at p. 40, ln. 20-25.

Mr. Stewart entered a conditional guilty plea and preserved his right to appeal the magistrate's decision to deny his motion to suppress. CR 76-78. The district court affirmed the magistrate's decision to deny Mr. Stewart's motion to suppress, finding that the "officer was entitled to rely upon the existence of the Nampa city ordinance . . .[and] could not be expected to know whether the city council had completed all the statutory steps required for enforcement of the

ordinance, or whether conflicting requirements under the state statute had been resolved." CR 137-139.

This appeal follows.

III. ISSUE PRESENTED ON APPEAL

1. Was Mr. Stewart's detention unreasonable under the state and federal constitutions?

IV. ARGUMENT

The Fourth Amendment to the United States Constitution and Article I, Section 17 of the Idaho Constitution prohibit unreasonable searches and seizures. A traffic stop for a suspected legal violation constitutes a seizure that must comply with the Fourth Amendment and Article 1, Section 17's prohibitions' against unreasonable searches and seizures. *Heien,* 135 S. Ct. at 536; *State v. Ferreira,* 133 Idaho 474, 481, 988 P.2d 700, 707 (Ct. App. 1999). The state and federal constitutions permit an officer to stop a vehicle if he has a reasonable and articulable suspicion that a person is driving a vehicle contrary to traffic laws. *Ferreira,* 133 Idaho at 481, 988 P.2d at 707. A *reasonable* suspicion must be objectively reasonable and the officer's subjective understanding is irrelevant. *Heien*, 135 S. Ct. at 539; *Ferreira,* 133 Idaho at 479, 988 P.2d at 705

In *Heien*, the United States Supreme Court held that an officer's reasonable mistake of law can provide the reasonable suspicion necessary to initiate a traffic

stop when the law is ambiguous. *Heien*, 135 S. Ct. at 539. While Idaho has not yet applied *Heien,* courts in other jurisdictions applying *Heien* hold that police cannot act in an objectively reasonable manner by misinterpreting an unambiguous statute. *See State v. Eldridge*, 790 S.E.2d 740, 743-44 (N.C. Ct. App. 2016) (cataloging cases); *see also United States v. Stanbridge*, 813 F.3d 1032, 1037 (7th Cir. 2016) (*Heien* does not support the proposition that a police officer acts in an objectively reasonable manner by misinterpreting an unambiguous statute); *State v. Stoll,* 370 P.3d 1130, 1135 (Arizona Ct. App. 2016) (same).

"If the statute the officer interpreted mistakenly 'is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not.'" *Stoll,* 370 P.3d at 1134, *citing Heien*, 135 S. Ct. at 541 (Kagan, J., concurring)

Here, notwithstanding *Heien'*s mandate, neither the magistrate nor the district court addressed whether the pertinent statutes and ordinance are ambiguous and, instead, concluded the officer reasonably relied on his training to enforce the default speed limit. However, Idaho's Motor Vehicle Code and Ordinance 2129 are unambiguous. Nampa conceded it had not posted proper signage and that Ordinance 1057, which the officer relied on, had been repealed. The officer's mistake of law was not reasonable and the magistrate should have granted the motion to suppress

Even if the officer's mistake could be construed as reasonable, *Heien's* holding that an officer's mistake of law can justify a detention is inconsistent with the Idaho Constitution. Idaho's independent and broader exclusionary rule should be construed to require courts to evaluate the officer's understanding of the facts against the actual state of law.

There is no dispute in this case that the officer was incorrect about the speed limit and the magistrate therefore erred in denying Mr. Stewart's motion to suppress. This Court should vacate the district court's order on intermediate appeal and instruct it to remand to the magistrate with instruction to suppress the evidence flowing from the traffic stop and allow Mr. Stewart to withdraw his guilty plea.

A. Standard of Review

This Court reviews the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's factual findings and whether the magistrate's legal conclusions of law follow from those findings. *State v. Korn*, 148 Idaho 413, 415, 224 P.3d 480, 482 (2009); *State v. Starr*, ___ Idaho ____, ___, 385 P.3d 900, 903 (Ct. App. 2016). If those findings are so supported and the conclusions follow therefrom, and if the district court affirmed the magistrate's decision, this Court affirms the district court's decision as a matter of procedure. *Id.*

Where the appellant challenges the trial court's decision denying a motion to suppress, this Court accepts the trial court's factual findings if they are supported by substantial evidence. *State v. Holland*, 135 Idaho 159, 161, 15 P.3d 1167, 1169 (2000); *State v. Atkinson,* 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996). This Court freely reviews the constitutional principles the trial court applied to those facts. *Holland*, 135 Idaho at 161, 15 P.3d at 1169; *State v. McCarthy*, 133 Idaho 119, 124, 982 P.2d 954, 959 (Ct. App. 1999).

B. The Officer's Mistake of Law Was Unreasonable and the Detention Violated Mr. Stewart's Rights Under the Fourth Amendment

Whether an officer's mistake of law can support a seizure presents a straightforward question of statutory construction. *Heien*, 135 S. Ct. at 541 (Justices Kagan and Ginsburg joins, concurrence); *see also Stanbridge*, 813 F.3d at 1037 (construing applicable statutes to determine if officer's mistake was reasonable); *Eldridge*, 790 S.E.2d at 743-44 (same); *Stoll,* 370 P.3d at 1135 (same). Reasonable suspicion can only be based on mistakes of law "when the law at issue is 'so doubtful in construction' that a reasonable judge could agree with the officer's view." *Heien*, 135 S.Ct. at 541; *State v. Huez*, 380 P.3d 103, 109 (Arizona Ct. App. 2016).

Neither the magistrate nor the district court addressed the question of statutory interpretation. Instead, both courts concluded the officer reasonably relied on his training that the welcome signs and Ordinance 1057 established a 20 mph

speed limit on city streets without speed limit signs. However, the officer's subjective, good-faith belief that Ordinance 1057 provided for a 20 mph speed limit on 10th Avenue South is irrelevant.

It is uncontested that the officer relied on a repealed ordinance and Nampa had not properly established a 20 mph speed limit on 10th Avenue South on the night the officer stopped Mr. Stewart. There is neither ambiguity in the law nor a conflict between the Ordinance 2129 and Title 49 of the Idaho Code. Mr. Stewart's detention violated the Fourth Amendment and the magistrate erred in denying the motion to suppress.

1. Title 49 of the Idaho Code and Ordinance 2129's requirements for enforcing speed limits and posting speed limit signs are unambiguous

Idaho statute prohibits drivers from operating a "vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing." I.C. § 49–654(1). "Where no special hazard or condition exists that requires lower speed," the law provides for varying speed limits including a 35 miles per hour speed limit "in any residential neighborhood of any urban district" or "a lesser maximum speed adopted pursuant to" I.C. § 49–207(2)(a). I.C. § 49-654(2).

Idaho Code Section 207(2)(a), in turn, allows local jurisdictions such as cities to determine that the statutory speed limit is "greater than is reasonable and safe . .

. because of the residential, urban or business character of the neighborhood abutting the highway in a residential, business or urban district." Cities "may determine and declare a reasonable and safe maximum limit [that] decreases the limit within a residential, business or urban district." I.C. § 49-207(2)(a).

A lowered speed limit becomes effective "when appropriate signs giving notice are erected upon the highway." I.C. § § 49-207(4). Appropriate signs are those that conform to the 2009 edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" published by the Federal Highway Administration of the U.S. Department of Transportation, including revisions 1 and 2 effective June 13, 2012 ("Uniform Traffic Manual"). *See* I.C. § 49-201(3); IDAPA 39.03.41.004.

Ordinance 2129 — the ordinance in effect when the officer stopped Mr. Stewart — is in accord. Nampa City Code authorizes the city engineer "to designate and maintain traffic control signs . . . when . . . required under the traffic laws of this code and the state" and those signs must "conform to the specifications approved by" the Uniform Traffic Manual. CR 63-64. The Uniform Traffic Manual has a table of various signs including speed limit signs with varying required sizes depending on where the sign is posted.[2] Table 2B-1. The section addressing speed limit signs includes illustrations of the varying signs. Figure 2B-3.

[2] The Uniform Traffic Manual is available online at: http://mutcd.fhwa.dot.gov

The district court characterized the absence of proper signs as "technical defenses to the enforceability of the ordinance," presumably focusing on the officer's testimony that the welcome signs did not meet the uniform requirements such as size. CR 146. However, it is uncontested that there were no speed limit signs on 10th Avenue South and the city was placing additional signs to comply with the law. Testimony from the city engineer was not presented in light of the magistrate's finding that the officer reasonably mistook the speed limit.

Moreover, Title 49 plainly provides that violations of traffic rules requiring traffic-control devices cannot be enforced against an alleged violator "if at the time and place of the alleged violation a device is not in proper position and sufficiently legible to be seen by an ordinarily observant person." I.C. § 49-801. Similarly, the Uniform Traffic Manual requires that "signs, indicating speed limits for which posting is required by law, shall be located at the points of change from one speed limit to another." Section 2B.13.03. Speed Limit signs showing the next speed limit must be posted "at the downstream end of the section to which a speed limit applies." Section 2B.13.04. "Additional Speed Limit signs shall be installed beyond major intersections and at other locations where it is necessary to remind road users of the speed limit that is applicable." Section 2B.13.04.

There is ambiguity in neither Title 49 nor Ordinance 2129 as to the requirements for establishing and enforcing speed limits. The mistake at issue here

certainly stands in contrast to the mistake found reasonable in *Heien*. There, an officer stopped a vehicle for having a faulty right brake light. The North Carolina Court of Appeals noted the relevant state code provided that a car must be "equipped with *a* stop *lamp* on the rear of the vehicle" and because the statute only requires one working brake light, the officer's decision to stop the vehicle for the faulty brake light was objectively unreasonable. *Id.* at 535 (emphasis added, internal citations omitted). On review, the North Carolina Supreme Court concluded that the officer could have reasonably read the vehicle code to require both brake lights to function, particularly a nearby code provision requiring that all originally equipped rear lamps to function. The North Carolina Supreme Court reversed the appellate court's decision, holding that an officer may make a mistake of law and still act reasonably for purposes of the Fourth Amendment. The United States Supreme Court agreed, noting that the statutory scheme could be reasonably read to require functional brake lights and the officer's decision to stop the vehicle for having a faulty right brake light was objectively reasonable. *Id*. at 540,

Here, Nampa apparently acknowledged that it could not enforce the speed limit on 10th Avenue because it had not posted signs in compliance with the Idaho Code or its current version of the city code. The city (and officer's) ignorance of the law does not equate an ambiguity in the law. The legal framework for establishing speed limits is unambiguous and the stop violated the Fourth Amendment.

2. The district court erred in concluding the officer reasonably relied on the "ordinance"

The district court found that: "there was no evidence here that the ordinance was not duly enacted by the city, that the ordinance establishing the speed limit at 20 mph did not exist on the date in question, that it was not on the books, or was not apparently enforceable in other areas of Nampa where necessary signs had been erected." CR 145. The district court concluded that "the city ordinance that did exist and was on the books" provided sufficient foundation for the officer's "good faith belief that the 20 mph speed limit was in place." *Id.*

However, there is no evidence that Ordinance 2129 (the ordinance "on the books" when the officer stopped Mr. Stewart) provided for a default speed limit of 20 mph. Instead, the version of Ordinance 2129 presented by the state in objection to Mr. Stewart's motion provided that speed zones are reflected on a map in the city engineer's office. CR 63.

Rather than conflict with Title 49, Ordinance 2129 provides that the city engineer is authorized to place signs that conform with the uniform manual. CR 63-64. The traffic code implemented by Ordinance 2129 is silent as to a default speed limit of 20 mph. Indeed, it appears that Nampa only recently codified a default speed limit in April 2016 with Ordinance 4247, which added Section 7–1-11. Addendum 1. Section 7-1-11 provides for specific speed limits in parks, alleys and school zones and provides the speed limit "on all other streets in Nampa, [is] twenty

(20) miles per hour, unless otherwise posted." Section 7-1-11 is absent from the code submitted by the state and there is no evidence that Nampa had codified a default speed limit in December 2014. CR 64-65.

Instead, the repealed ordinance, Ordinance 1057, conflicted with the statutory sign requirements. Specifically, the ordinance provided that "the city of Nampa is hereby authorized to post at every major entrance to the city of Nampa signs designating the speed limit in the city of Nampa to be twenty miles per hour (20 mph) unless otherwise posted." Exhibit B.

The state conceded that Ordinance 1057 was repealed in 1988 by Ordinance 2128 and replaced with Ordinance 2129. It was objectively unreasonable for the officer, who is charged with enforcing the speed limit, to rely on an outdated ordinance instead of controlling Idaho Code. The district court erred in concluding the officer reasonably relied on the "ordinance."

3. Nampa's failure to follow unambiguous statutory requirements is not analogous to a subsequent judicial declaration that an ordinance is unconstitutional

Citing to *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979), the district court found that the officer "could not be expected to know whether the city council had completed all the statutory steps required for enforcement of the ordinance, or whether conflicting requirements under the state statute had been resolved." As discussed above, there is no evidence that the ordinance in effect had a default

speed limit and the officer relied on an ordinance that had been repealed almost 30 years earlier.

Moreover, in *DeFillippo*, the officer had arrested the defendant for violating an ordinance that a court subsequently ruled was *unconstitutional*. The United States Supreme Court noted that a law's enactment "forecloses speculation by . . . officers concerning its constitutionality" and that "society would be ill-served if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement." *DeFillippo*, 443 U.S. at 38. Nampa's failure to comply with the Idaho Code does not invoke the myriad of considerations at issue when the *judiciary* determines that a *legislative* enactment violates the *constitution*.

Nor is the situation one involving a conflict between a statute and ordinance or a subsequent declaration that the "ordinance" is invalid. Instead, it appears Nampa realized on its own that it had not complied with the unambiguous statutes and its own ordinance, which requires uniform signs placed at sufficient locations to adequately advise the public regarding the speed limit. Citizens are presumed to know the parameters of the traffic laws and it is surely appropriate to expect the same of law enforcement officers. *See Northrup v. City of Toledo Police Dep't*, 785 F. 3d 1128, 1132 (6th Cir. 2015).

Indeed, the Court of Appeals has previously held that an officer's mistaken belief that a speed limit is lower than the speed limit provided by law is not objectively reasonable and cannot support a reasonable and articulable suspicion to initiate a traffic stop. *Peck v. Dep't of Transp.*, 153 Idaho 37, 46, 278 P.3d 439, 448 (Ct. App. 2012); *McCarthy*, 133 Idaho at 125, 982 P.2d at 960. In *McCarthy*, the officer stopped the defendant for speeding because the officer incorrectly believed that a twenty-five mile per hour speed limit sign was posted to the west of an intersection when it was actually located to the east. *McCarthy*, 133 Idaho at 121, 982 P.2d at 956. After noting a split of authority regarding the validity of traffic stops based on a mistake of law, the Court held it was unnecessary to resolve whether a police officer's mistake of law was *per se* unreasonable because the stop could not be upheld even under the less stringent standard allowing for reasonable mistakes of law by police. *McCarthy*, 133 Idaho at 125, 982 P.2d at 960.

In *Peck*, the defendant contended the city failed to follow the Idaho Code in setting a lower speed limit. The Court evaluated the pertinent statutes and concluded the city complied with the statutes when it lowered its speed limit. *Peck*, 153 Idaho at 46-47, 278 P.3d at 448-449. The stop was lawful because: "(1) by statute, it was within the City's authority to lower the speed limit [to 35 mph] along that portion of the highway; [and] (2) the posted speed limit was 35 mph." *Peck*, 153

Idaho at 49, 278 P.3d at 450. Here, it is uncontested that Nampa did not place the signs necessary to effectuate a 20 mph speed limit on 10th Avenue South.

Idaho Code unambiguously requires that cities erect signs complying with the Uniform Traffic Manual in order to enforce speed limits within their jurisdictions. The city ordinance in effect (as opposed to the antiquated ordinance relied on by the officer) also requires compliance with the uniform signs described in the manual. It is undisputed that Nampa failed to post such signs and that it could not enforce a 20 mph speed limit on the section of 10th Avenue South where the officer initiated the traffic stop.

4. The officer's good faith is irrelevant

According to the magistrate, "suppression of evidence is designed at least in part to deter unlawful police activity." MTS Tr. 31, ln. 11-17. The magistrate further found that the goal would not be served by suppressing the evidence in this case because the officer "thought the speed limit was 20. Now that the signs are properly on there it is 20. So he did everything he was supposed to do." *Id.* at p. 31, ln. 15-17. Similarly, the district court concluded "the officer's suspicion that a traffic offense might have been committed, based upon his training and experience, his personal observation of the speed of the defendant's vehicle here, and his knowledge of the existence of the 20 mph speed limit ordinance is all that would be required for the traffic stop in the first instance." CR 146.

However, "an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce." *Stanbridge*, 813 F.3d at 1037, *citing Heien*, 135 S.Ct. at 539-40. The *Heien* Court emphasized that "the Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved." *Heien*, 135 S. Ct. at 539 (emphasis in original).

Apparently, the officer's reliance on Ordinance 1057 and the welcome signs was a product of an outdated pocket book issued by the police department and on-the-job training. However, "'an officer's reliance on an incorrect memo or training program from the police department makes no difference' for purposes of our strictly objective inquiry." *Stoll,* 370 P.3d at 1135, *citing Heien*, 135 S.Ct. at 541 (Kagan, J., concurring) (internal citation omitted). In *Stoll*, a patrol commander from the sheriff's department testified that the department had trained deputies for years that any rear-facing white light on a vehicle other than a backup lamp violated the state statute. On appeal, the Court determined that the sheriff's department's interpretation was incorrect and the pertinent statute was unambiguous.

The *Stoll* Court further found that the patrol commander's testimony had no bearing on its analysis and "the fact that the department had trained its officers in a way that permitted a misreading of [the statutes] does not make that misreading

objectively reasonable." *Stoll,* 370 P.3d at 1135. Similarly, the fact that the Nampa Police Department trained its officers to enforce a repealed ordinance and that the city's engineer failed to effectuate a 20 mph speed limit fails to make the conduct objectively reasonable.

In *McCarthy*, the Court of Appeals also found the officer's subjective good faith irrelevant. The Court reasoned that it had "no reason to doubt that [the officer] was acting in good faith and with a genuine belief that the twenty-five mile per hour speed limit sign was located west of the intersection . . . [however] an officer's subjective good faith is insufficient." *McCarthy*, 133 Idaho at 125, 982 P.2d at 960. The Court noted that there nothing in the record to suggest the mistake was reasonable such as evidence that the speed limit sign had recently been moved, evidence that the officer had been misinformed about the sign's location or the speed limit, or a situation where the operative law was ambiguous. *Id.*; *see also United States v. Alvarado-Zarza*, 782 F.3d 246, 250 (5th Cir. 2015) (holding mistake of law was not objectively reasonable under *Heien* because controlling caselaw predated the stop and the statute's plain terms did not support the officer's interpretation); *Darringer v. State*, 46 N.E.3d 464 (Ind. Ct. App. 2015) (finding the facts in *Heien* "clearly distinguishable" where officer stopped the vehicle for improperly placed interim plates and the applicable statute had allowed interim plates in the location observed by the officer for almost one year prior to the stop).

There is no ambiguity in the law as to the speed limit on 10th Avenue at the time of Mr. Stewart's traffic stop. The officer relied on an ordinance that had been superseded by a subsequent ordinance and state statute three decades earlier to determine Mr. Stewart violated the speed limit. The statutory scheme presents no ambiguity and the officer's belief that the outdated ordinance controlled was objectively unreasonable. Accordingly, the magistrate erred in denying Mr. Stewart's motion to suppress.

C. To Constitute a Reasonable Suspicion as Required to Support an Investigative Detention Under the Idaho Constitution Requires Courts to Evaluate the Officer's Understanding of the Facts Against the Actual State of the Law

The Fourth Amendment and Article 1, Section 17 are both designed to protect a person's legitimate expectation of privacy. Nevertheless, the similarity of language and purpose does not require Idaho courts to follow United States Supreme Court precedent in interpreting our own constitution. *State v. Koivu*, 152 Idaho 511, 518, 272 P.3d 483, 490 (2012); *State v. Donato,* 135 Idaho 469, 471, 20 P. 3d 5, 7 (2001). To the contrary, the Idaho Supreme Court has found that the Idaho Constitution deserves a unique interpretation "based on the uniqueness of our state, our Constitution, and our long-standing jurisprudence." *Koivu*, 152 Idaho at 519, 272 P.3d at 491, *citing Donato*, 135 Idaho at 472, 20 P.3d at 8; *see also State v. Cada*, 129 Idaho 224, 231, 923 P.2d 469, 476 (Ct. App. 1996). The Idaho Supreme Court concluded that Article 1, Section 17 required courts to exclude evidence

obtained in violation of the constitution more than thirty years before the United States Supreme Court held that the exclusionary rule applied to the states. *See State v. Arregui,* 44 Idaho 43, 254 P. 788 (1927); *see also Koivu*, 152 Idaho at 516, 272 P.3d at 488; *Guzman*, 122 Idaho at 991, 842 P.2d at 670.

The United States Supreme Court's holding that a police officer's mistake of law can support a reasonable suspicion that a citizen is breaking the law conflicts with the manner in which Idaho has applied its independent exclusionary rule for decades. The Idaho Constitution should instead be interpreted to require courts to evaluate an officer's understanding of the facts against the actual state of the law. Thus, even if the officer's mistake in this case was reasonable under the *Heien* Court's interpretation of the Fourth Amendment, the ensuing stop violated Article 1, Section 17 of the Idaho Constitution.

1. Whether an officer reasonably suspects a citizen of breaking the law should not take into account the officer's understanding of the law

While nominally an objective inquiry, inquiring whether an officer reasonably mistook the state of the law bears a certain resemblance to asking whether he acted in good faith. *See McCarthy*, 133 Idaho at 126, 982 P.2d at 961 (Judge Schwartzman, concurring) (if an officer's "good faith" cannot save a defective search warrant issued by a magistrate, that same "good faith" should not be able to save a stop made because the officer made a mistake as to the applicable speed limit).

Idaho has long-rejected a good-faith exception to the exclusionary rule under the Idaho Constitution and this Court should do so in this context.

In *Guzman*, the Idaho Supreme Court considered whether the "good-faith" exception to the exclusionary rule adopted by *United States v. Leon*, 468 U.S. 897 (1984) was consistent with the protections afforded by Article 1, Section 17. *Guzman*, 122 Idaho at 992–97, 842 P.2d at 671–76. The Court noted that while it did not challenge the United States Supreme Court's power to define the parameters of fourth amendment . . . it is equally important that the protections accorded under our state constitution not be diminished by a permanently pervading adoption of the federal good-faith exception. *Guzman*, 122 Idaho at 988-89, 842 P.2d at 667-68.

In rejecting a good faith exception to the exclusionary rule required by the Idaho Constitution, the Idaho Supreme Court reasoned that the rule "does more than merely deter police misconduct" and also acts to encourage thoroughness in the warrant issuing process; to avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means to preserve judicial integrity. *Guzman*, 122 Idaho at 993, 842 P.2d at 672. In 2012, the Idaho Supreme Court re-affirmed *Guzman's* holding that deterring police conduct is not the exclusionary rule's sole purpose. *Koivu*, 152 Idaho at 519, 272 P.3d at 491.

Both an officer's good faith reliance on a search warrant and his reasonable mistake of law involve an after-the-fact judicial determination that the officer was mistaken as to what the law permitted him to do. As discussed by the *Heien* dissent, the reasonableness inquiry has historically turned on an officer's factual conclusions and an officer's expertise with respect to those factual conclusions. *Heien*, 135 S. Ct. at 543 (Sotomayor dissenting). Conversely, the law's meaning is not probabilistic in the same manner as factual determinations and "the notion that the law is definite and knowable" sits at the foundation of our legal system. *Id. citing Cheek v. United States,* 498 U.S. 192, 199 (1991).

An officer's mistake of law presents an entirely distinct issue from a reasonable mistake of fact. The former should not be relevant in determining whether an investigative detention is supported by reasonable suspicion and this Court should not construe our state constitution as allowing court's to uphold traffic stops based on an officer's mistake of law.

2. The goals underlying Idaho's exclusionary rule would be furthered by requiring courts to evaluate the facts understood by the officer against the actual state of the law

A police officer should be presumed to know the speed limit in his own jurisdiction. *McCarthy,* 133 Idaho at 125, 982 P.2d at 960 (Schwartzman concurrence). The judiciary and law enforcement lose integrity when there is no consequence when those enforcing the law mistake what the law requires but a

citizen's mistake of law is no excuse for failing to comply with the law's terms. If an officer's "good faith" cannot save a defective search warrant issued by a magistrate, that same "good faith" should not be able to save a stop made because the officer made a mistake as to the applicable speed limit. *McCarthy,* 133 Idaho at 125, 982 P. 2d at 960 (Schwartzman concurrence), *citing Guzman*. To hold otherwise, would transmute the into not "what the law *is,* but that which the officer, in "good faith," believes it to be." *McCarthy,* 133 Idaho at 127, 982 P.2d at 961.

Taking into account the officer's understanding of the law further erodes the Fourth Amendment's protection of civil liberties in a context where that protection has already been worn down. Traffic stops like those at issue here can be "annoying, frightening, and perhaps humiliating." *Terry v. Ohio,* 392 U.S. 1, 16, (1968). When the United States Supreme Court held that an officer's subjective motivations do not render a traffic stop unlawful in *Whren v. United States,* 517 U.S. 806 (1996), the Court assumed "that when an officer acts on pretext, at least that pretext would be the violation of an actual law." *Heien*, 135 S. Ct. at 543 (Sotomayor dissenting). Under *Whren* and *Heien*, our courts can allow evidence obtained from a stop in which the officer pulled over a citizen for a subjectively improper purpose such as racism or a personal grudge *and* where the officer's "objective" reason for the stop involved a mistaken understanding of the law.

Nor does *Heien's* reasoning represent a uniform opinion among other jurisdictions. *Heien* resolved a split among state and federal jurisdictions by holding that mistakes of law do not always invalidate a search or seizure under the Fourth Amendment. *See State v. McCarthy*, 133 Idaho 119, 124-25, 982 P.2d 954, 959-60 (Ct. App. 1999) (noting that other jurisdictions were in conflict as to whether a mistake of law is unreasonable *per se* or is to be tested under the same reasonableness standard that applies to mistakes of fact); *State v. Heien*, 737 S.E.2d 351, 355 (N.C. 2012) (noting that various federal and state courts have reached varying conclusions as to whether a stop is permissible when an officer witnesses what he reasonably, though mistakenly, believes to be a traffic violation). Since *Heien*, Oregon has explicitly declined to adopt its holding in interpreting its state constitution. *State v. Heilman*, 342 P.3d 1102, 1106 n.5 (Or. App. 2015).

This Court should decline to hold that a police officer's "reasonable" mistake of law can support a reasonable suspicion necessary to support an investigative detention under Article 1, Section 17 of the Idaho Constitution. The Idaho Constitution should instead be interpreted to require courts to evaluate an officer's understanding of the facts against the actual state of the law. Thus, even if the officer's mistake in this case was reasonable under pursuant to the *Heien* Court's interpretation of the Fourth Amendment, the ensuing stop violated Article 1, Section 17 of the Idaho Constitution.

V. CONCLUSION

Mr. Stewart respectfully asks this Court to reverse the district court's order on intermediate appeal and remand with instruction to reverse the magistrate's judgment and order of probation and to allow Mr. Stewart to withdraw his guilty plea.

Respectfully submitted this 24th day of January 2017.

FYFFE LAW

/s/ Robyn Fyffe
ROBYN FYFFE
Attorney for David Stewart

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an electronic copy was served on Criminal Law Division of the Idaho Attorney General at ecf@ag.idaho.gov on January 24, 2017.

FYFFE LAW

/s/ Robyn Fyffe
ROBYN FYFFE

Chapter 1
GENERAL PROVISIONS

7-1-1: VISION CLEARANCE:

It is the responsibility of the property owner to maintain vegetation, fences and restrict obstructions on the public right of way between the roadway and the property line, within the front yard areas or within the "vision clearance" areas as defined by section 10-1-2, "Definitions", of this code in such a manner that they do not create a traffic hazard, interfere with pedestrian traffic, obscure traffic control signs or create a vision sight problem. Any vegetation, fence or obstruction which creates one of the above mentioned problems may be deemed a nuisance and may be subject to the enforcement provisions of section 3-4-2, "Abatement Of Nuisances", of this code.

Trees in the vision clearance area shall be trimmed at least nine feet (9') above the curb line to provide clear visibility up to that height. Shrubs and site obscuring fences or walls in vision clearance areas shall not exceed two and one-half feet ($2^1/_2$') in height above the curb line. (Ord. 2129; amd. Ord. 2210)

7-1-2: TRAFFIC REGULATION MAPS; VIOLATION:

Traffic designations and regulations, including, but not limited to, speed zones and truck routes, are maintained on maps on file in the city engineer's office. These maps may be amended by resolution of the council upon recommendation of the chief of police and city engineer. (Ord. 2129)

7-1-3: AUTHORITY AND PLACEMENT OF SIGNS:

The city engineer is authorized to designate and maintain traffic control signs, signals, devices and marks when and as required under the traffic laws of this code and the state and may place and maintain additional traffic control devices as may be necessary to regulate, guide or warn traffic, provided however, that no stop sign or signal light shall be placed at any location except upon the approval of the council. (Ord. 2129)

7-1-4: SIGN SPECIFICATIONS:

Addendum 1

All official traffic control signs, signals and devices erected throughout the city shall, so far as

practicable, conform to the specifications approved by the "Manual On Uniform Traffic Control Devices For Streets And Highways" published by the U.S. department of transportation. (Ord. 2129)

7-1-5: SHORT CUT USING PRIVATE DRIVEWAY:

It is unlawful for the operator of any motor vehicle to drive upon or use any private driveway, private property, or parking lot as a shortcut or public thoroughfare. Any violation of this provision shall be an infraction. (Ord. 4165, 3-2-2015)

7-1-6: BARRICADES:

The chief of police has the authority, when he deems it necessary, to order certain streets and alleys in the city to be barricaded and closed to traffic; and the chief may cause temporary barricades to be constructed closing off certain streets. (Ord. 2129)

7-1-7: TRUCK ROUTES; PENALTY:

It is unlawful for any person to operate a truck or any commercial vehicle with or without a load within the city limits except upon those streets or parts of streets designated as truck routes on a map on file in the city engineer's office and posted by signs. Any violation of this provision shall be an infraction. (Ord. 4165, 3-2-2015)

7-1-8: U-TURNS PROHIBITED AT TRAFFIC LIGHTS:

It is unlawful for the driver or operator of any motor vehicle traveling in any direction upon the streets of the city to reverse or change the direction of said vehicle by making what is commonly known as a "U-turn" at and/or on any intersection where there is a traffic light unless specifically authorized by the Nampa city council and appropriate signage is installed. Any violation of this provision shall be an infraction. (Ord. 4165, 3-2-2015)

7-1-9: CARELESS DRIVING:

It is unlawful for any person to operate a motor vehicle in a careless or inattentive manner or in disregard of the safety of persons or property.

Careless driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight. Any violation of this provision shall be an infraction. (Ord. 4165, 3-2-2015)

7-1-10: AIR COMPRESSION BRAKES:

A. Prohibited: The use of air compression brakes (also known as "jake brakes") by motor vehicles within the city limits of the city of Nampa is hereby prohibited and shall be unlawful except under emergency circumstances where the use of air compression brakes is necessary to prevent an accident or injury to persons or property.

B. Exemption: Motor vehicles owned and operated by a fire department are specifically exempted from the prohibitions of this section.

C. Penalty: Any person who violates any provision of this section shall be deemed guilty of an infraction and upon judgment thereof shall be subject to the fixed penalty for moving traffic infractions set by the Idaho infractions rules 9(b)(5). (Ord. 3836, 12-1-2008)

7-1-11: SPEED LIMIT RESTRICTIONS:

No person shall drive a vehicle on a highway or street at a speed greater than that which is reasonable and prudent under the conditions and with regard to actual potential hazards then existing. The limits specified in this section, or established as posted, shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of such limits. A violation of this section shall be an infraction.

A. Parks And Alleys: In any public park, or in any alley, fifteen (15) miles per hour. The term "alley" shall mean a minor public way providing secondary access at the back or side of a property for vehicle or pedestrian traffic.

B. City Streets: On all other streets in Nampa, twenty (20) miles per hour, unless otherwise posted.

C. School Zones: Twenty (20) miles per hour when any of the following exist:

1. A school speed limit sign with flashing lights attached and the words "when flashing" posted and the lights are activated; or

2. A school zone speed limit sign with designated time frames included thereon.

3. Any person that violates this subsection shall be guilty of an infraction and shall be assessed a fixed penalty of one hundred dollars ($100.00) excluding court costs and fees. (Ord. 4247, 4-18-2016)